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**BEFORE THE ARIZONA CORPORATION****COMMISSIONERS**

BOB STUMP - Chairman  
GARY PIERCE  
BRENDA BURNS  
BOB BURNS  
SUSAN BITTER-SMITH

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ARIZONA CORPORATION COMMISSION  
DOCKET CONTROLArizona Corporation Commission  
**DOCKETED**

AUG 22 2014

DOCKETED BY

DOCKET NO. W-01445A-03-0559

IN THE MATTER OF THE APPLICATION OF  
ARIZONA WATER COMPANY TO EXTEND  
ITS CERTIFICATE OF CONVENIENCE AND  
NECESSITY IN CASA GRANDE, PINAL  
COUNTY, ARIZONA.

**PROCEDURAL ORDER****BY THE COMMISSION:****ORIGINAL**

On April 6, 2004, Decision No. 66893 was issued in this docket. Decision No. 66893 conditionally granted an application filed on August 12, 2003 by Arizona Water Company ("Arizona Water" or "AWC") for an extension of its existing Certificate of Convenience and Necessity ("CC&N") in Pinal County, Arizona.

Decision No. 66893 placed two conditions on the approval of Arizona Water's August 12, 2003 application. Arizona Water was ordered to file: (1) a copy of the Developers' Certificate of Assured Water Supply ("CAWS") for both the Post Ranch development and the Florence Country Estates development with the Arizona Corporation Commission ("Commission") within 365 days of the Decision; and (2) a main extension agreement associated with the extension area within 365 days of the Decision.

On July 30, 2007, Decision No. 69722 was issued finding that Arizona Water was not able to comply with the time periods established in Decision No. 66893 because the developer of a portion of the extension area withdrew its Arizona Department of Water Resources ("ADWR") CAWS application. However, the Commission concluded that the issuance of the ADWR Analysis of Assured Water Supply satisfied the objective of the condition in Decision No. 66893 for submission of a CAWS for the Florence Country Estates development and that adequate physical water supplies exist for the development. Decision No. 69722 therefore found that, for purposes of compliance, the conditions placed on Arizona Water's CC&N extension in Decision No. 66893 had been fulfilled.

1 Decision No. 69722 also remanded the case to the Hearing Division for further proceedings regarding  
2 whether AWC should continue to hold a CC&N for the property owned by intervenor Cornman  
3 Tweedy 560 LLC ("Cornman Tweedy").

4       Following the submission of additional testimony and briefing by the parties, a Recommended  
5 Order on Remand was issued by the Hearing Division on November 29, 2010. The Recommended  
6 Order was discussed during the Commission's December 14, 2010 Open Meeting, and again during  
7 the February 1, 2011 Open Meeting. At the February 1, 2011 Open Meeting, the Commission voted  
8 to send the matter back to the Hearing Division for further proceedings to determine "whether a  
9 public service corporation, like Arizona Water, in this water challenged area and under the  
10 circumstances presented in this case, is providing reasonable service if it is not able or not willing to  
11 provide integrated water and wastewater services."

12       In the intervening period, procedural conferences have been held, discovery disputes have  
13 been resolved, and a number of filings have been made regarding various matters.

14       On January 10, 2013, a procedural conference was conducted as scheduled. At the procedural  
15 conference, Cornman Tweedy's Motion for Protective Order was granted and the parties were  
16 directed to submit a proposed procedural schedule for processing the case.

17       On February 10, 2014, Cornman Tweedy and AWC filed a Notice of Stipulation Regarding  
18 Procedural Schedule.

19       On February 24, 2014, a Procedural Order was issued and the proposed schedule was adopted.  
20 The Procedural Order also scheduled a hearing to commence on August 25, 2014.

21       On July 10, 2014, Cornman Tweedy filed a Request for Short Continuance of Hearing Date,  
22 and indicated that counsel for AWC had no objection to a short continuance.

23       On July 14, 2014, a Procedural Order was issued continuing the hearing to September 4,  
24 2014.

25       On July 18, 2014, Cornman Tweedy filed the Rebuttal Testimony of Stephen Soriano, Ernest  
26 G. Johnson, and Fred Goldman.

27       On July 25, 2014, Arizona Water filed a Notice of Deposition of Ernest G. Johnson Sr.

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1 On July 29, 2014, Arizona Water filed a Motion to Strike Pre-Filed Rebuttal Testimony of  
2 Ernest G. Johnson and to Preclude his Testimony at Hearing.

3 On July 31, 2014, Cornman Tweedy filed Notices of Deposition for Rita P. Maguire and Paul  
4 Walker.

5 On August 1, 2014, Arizona Water filed a First Amended Notice of Deposition of Ernest G.  
6 Johnson.

7 On August 11, 2014, Arizona Water filed a Supplement to Motion to Strike Pre-Filed  
8 Rebuttal Testimony of Ernest G. Johnson and to Preclude his Testimony at Hearing.

9 On August 12, 2014, a Procedural Order was issued directing Cornman Tweedy and Staff to  
10 file Responses to AWC's Motion by August 15, 2014, and for AWC to file a Reply to those  
11 Responses by August 20, 2014.

12 On August 15, 2014, Cornman Tweedy and Staff filed their Responses to Arizona Water  
13 Company's Motion to Strike the Pre-Filed Testimony of Ernest G. Johnson.

14 On August 20, 2014, AWC filed its Reply to Responses to Motion to Strike Rebuttal  
15 Testimony of Ernest G. Johnson and to Preclude his Testimony at Hearing.

16 In its Reply, AWC states, among other things, that it did not rely on Arizona Revised Statutes  
17 ("A.R.S.") § 38-504(A) as a basis for its Motion to Strike and that Arizona Administrative Code  
18 ("A.A.C.") R14-3-104(G) is the relevant rule for purposes of deciding the Motion. AWC asserts that:  
19 "A.R.S. 38-504(A) does not conflict with or override A.A.C. R14-3-104(G). Cornman Tweedy and  
20 Staff do not argue that A.R.S. 38-504(A) trumps A.A.C. R14-3-104(G). Thus, the only relevant  
21 consideration is A.A.C. R14-3-104(G)." (AWC Reply, at 2.)

22 Despite AWC's claim, Cornman Tweedy does contend that A.R.S. § 38-504(A) is the  
23 controlling statute on this issue, citing to A.R.S. § 38-501(B) which provides:

24 B. Notwithstanding the provisions of any other law, or the provisions  
25 of any charter or ordinance of any incorporated city or town to the  
26 contrary, the provisions of this article shall be exclusively applicable to  
27 all officers and employees of every incorporated town or political  
subdivision of the state and any of its departments, commissions,  
agencies, bodies or boards and shall supersede the provisions of any  
other such law, charter provision or ordinance.

1 (Cornman Tweedy Response at 3, fn 4, emphasis included in Response.) Therefore, AWC should  
2 address Cornman Tweedy's argument that A.R.S. § 38-504(A) is the controlling statute and  
3 supersedes the Commission's rule set forth in A.A.C. R14-3-104(G). AWC should also respond to  
4 Cornman Tweedy's assertion that if Mr. Johnson is precluded from testifying, AWC's witness, Paul  
5 Walker, should also be disqualified due to his prior employment as former Commissioner Spitzer's  
6 policy advisor. (See, Cornman Tweedy Response at 4.) AWC should file a Supplemental Reply  
7 regarding these arguments by August 27, 2014.

8       Given that the hearing in this matter is scheduled to begin September 4, 2014, and the fact that  
9 this issue is currently unresolved, the hearing will be continued indefinitely and the September 4,  
10 2014 date shall be used to conduct a procedural conference for the purpose of taking oral argument  
11 on AWC's Motion to Strike, discussion of alternative hearing dates, and to address other pending  
12 procedural matters.

13       IT IS THEREFORE ORDERED that the hearing scheduled for September 4, 2014 is  
14 hereby vacated.

15       IT IS FURTHER ORDERED that a procedural conference shall be conducted on  
16 September 4, 2014, at 10:00 a.m., at the offices of the Commission, 1200 West Washington Street,  
17 Phoenix, Arizona 85007, Hearing Room No. 1, for the purpose of taking oral argument on  
18 AWC's Motion to Strike, discussion of alternative hearing dates, and to address other pending  
19 procedural matters.

20       IT IS FURTHER ORDERED that AWC shall file a Supplemental Reply, by August 27,  
21 2014, to address the issues discussed above.

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1 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,  
2 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at  
3 hearing.

4 DATED this 22<sup>nd</sup> day of August, 2014.

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7 DWIGHT D. NODES  
8 ASSISTANT CHIEF ADMINISTRATIVE LAW JUDGE  
9


10 Copies of the foregoing mailed/delivered  
11 this 22<sup>nd</sup> day of August, 2014, to:

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